



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Councilmember Jimenez

SUBJECT: Campaign Finance Regulations

DATE: November 12, 2020

Approved

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RECOMMENDATION

1. Direct staff to research and return to Council with ordinances that strengthen our local campaign finance regulations. The following regulations should be explored:
 - a. Disclosure of top donors contributing to campaign committees making independent expenditures in municipal elections directly on all electioneering communications. Staff should specifically evaluate regulations from the following cities:
 - i. Mountain View (Muni Code Section 2.106)
 - ii. Cotati (Muni Code 1.09.090)
 - b. Enhanced enforcement of electioneering communication and other campaign regulations.
 - i. Require campaign committees making independent expenditures to file any mailing or distributed flyers (over 200) with the City Clerk, who will serve as a repository for literature without commentary.
 - ii. Create a central online location for campaign finance disclosure information.
 1. Require that this website be disclosed directly on all campaign electioneering communications, including mailers, television ads, and radio ads.
 2. Use the City & County of San Francisco Ethics Commission website as a model: <https://sfethics.org/>
 - iii. Explore an enforcement model similar to the California Fair Political Practices Commission (FPPC) Enforcement Division "AdWATCH" - <http://www.fppc.ca.gov/enforcement/adwatch.html>
 - iv. Determine whether disclosure requirements can be imposed on "push polling," which attempt to influence voters using manipulative or leading questions.
 - v. Evaluate any modifications to the San José Board of Fair Campaign and Political Practices necessary to implement all of the regulations above and

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- improve the ability of the Board to ensure compliance with local campaign regulations.
2. Organize a City Council Study Session in Spring 2021 and invite campaign finance legal experts to explore innovative approaches to limiting corruption, or the appearance of corruption, of corporate and special interest spending on municipal elections. The following options should be examined:
 - a. limiting conflicts of interest;
 - b. prohibition of foreign-influenced contributions;
 - c. contribution limits to independent expenditure committees; and
 - d. public financing, including analysis of recent laws and proposals in Seattle, San Francisco, and Oakland.
 3. Amend the scope of the Charter Review Commission to include a review of Section 607, Code of Ethics.
 4. Amend the scope of the Charter Review Commission to include an evaluation of whether it would be desirable to establish the San José Board of Fair Campaign and Political Practices directly in the Charter.
 5. Place the item on the December 1, 2020 Council Agenda for action.

BACKGROUND

We have seen an astonishing amount of money spent on negative, divisive, and often misleading or outright false advertisements and other campaign materials this election cycle. Toxic campaign practices diminish public trust and harm the integrity of elections. To advance the public interest in fair campaign practices and restore public trust in local government, I recommend that we review and strengthen local campaign finance disclosure regulations.

The City has already enacted strong regulations capping contributions to candidates for office and to candidate-controlled committees. However, there are currently few regulations for independent expenditures made by political committees not controlled by a candidate. This is troubling, as it shifts money away from candidate-controlled committees, where it is highly regulated, to an unregulated space that has limited or no accountability to voters. Further, negative political advertisements are funded disproportionately through independent expenditures, not by candidate-controlled committees.

We should begin with the following regulations, models for which can be found in cities throughout California that have adopted them:

- Disclosure of the top donors contributing to campaign committees making independent expenditures in municipal elections directly on all electioneering communications. Local ordinances allow for stronger regulations than required by state law. This could include increasing the number of disclosed contributors to 5 (or more), disclosing whether a majority of funds come from out-of-City donors, and disclosing the amount of money

¹<https://caselaw.findlaw.com/us-supreme-court/08-205.html>

donated by each contributor. The disclosures could appear on mailers, television ads, radio ads, digital ads, and other campaign materials.

- Enhanced enforcement of electioneering communication and other campaign regulations. This should include providing more information to voters about campaign finance disclosures and implementing measures to ensure compliance.

Fortunately, while the 2010 Citizens United Supreme Court ruling reduced regulations on political contributions, it upheld and promoted disclosure as an appropriate and desirable regulation on political speech:

The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.¹

Limitations on contributions to campaign committees making independent expenditures in municipal elections would “level the playing field” by enacting regulations similar to those already in effect for candidates and candidate-controlled committees. While Citizens United prohibits limiting expenditures made by these committees, it appears other cities have adopted limitations on contributions made to these committees, and we should explore their applicability and feasibility here in San José. We should also be open to other, more innovative approaches to campaign finance regulations, which we can further explore in a study session next year.

Finally, we must implement accountability mechanisms to ensure compliance and penalize violations. The San José Board of Fair Campaign and Political Practices, supported by the City Clerk and City Attorney, can effectively enforce these regulations if provided the proper tools.

The Planning Commission, Civil Service Commission, and Salary Setting Commission are established by the Charter. We should consider elevating the Board of Fair Campaign and Political Practices given its importance in enhancing the integrity of local elections. We may also wish to explore modifications to Section 607 of the Charter, the Code of Ethics, consistent with the scope of the Charter Review Commission to “improve accountability, representation, and inclusion at San José City Hall,” to help implement the recommendations in this memo.

The proposed recommendations seek to implement good government provisions intended to avoid corruption or the appearance of corruption in the decision making of the Mayor and Council and to protect the integrity of Council processes. These provisions help restore public trust in local government, diminish the influence of money in politics, and reduce the power of lobbyists.

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